IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2296 OF 2003

AIR India Ltd. ... Petitioner

Versus

Ram Naresh Singh and anr. ... Respondents

Mr. S.K. Talsania, Sr. Advocate with Mr. J. Saluja i/by M.V. Kini & Co. for Petitioner.

Mr. J.P. Cama, Sr. Advocate with Mr. Mahesh Londhe i/by Sanjay Udeshi & Co. for Respondent No. 1.

CORAM : F.I. REBELLO, J.
DATED : OCTOBER 14, 2005

P.C.

. Rule. Heard forthwith.

. The Petition by Air India is to set aside the Award dated 24.10.2002 in Reference No. 8 of 1999. By that reference, the Presiding Officer of the Central Government Industrial Tribunal was pleased to hold that the order dated 10.1.1991 dismissing the workman Mr. R.N. Singh from service is null and void. The learned Tribunal has held that the Petitioners had to fulfil two conditions in order to enable the tribunal to come to conclusion that

the dismissal was valid namely (1) Payment of wages for one month and (2) filing of application for approval before the Authority where the dispute not connected with the order of discharge or dismissal by way of punishment is pending. In the instant case, the tribunal was pleased to hold that there was Reference pending before the tribunal and as such the Petitioners had to seek approval of the tribunal and that had not been done.

. On behalf of the Petitioners, it was contended that when Reference was made in the present case there was no reference in law pending before the Industrial tribunal warranting an application for approval. It was also pointed out that the tribunal thereafter by Award Part I dated 6.9.2004 in Reference NTB/016/090 has held that the dispute which was pending did not refer to to Petitioner and its workmen. There is discussion to his effect in Para 24 of the Award. On the other hand on behalf of the Respondent workman, it is pointed out that the tribunal could not have gone beyond the terms of Reference. It is also pointed out that this court in Anil Joshi Versus AIR India in Writ

Petition No. 1523 of 1997 along with Writ Petition No. 1479 of 1999 decided on 26.7.2001 had taken a view that the Petitioner therein had to apply for Reference.

. Before the judgment could be passed, the learned counsel for the Petitioners has drawn attention of this court to the judgment of the Apex Court in Air India Ltd. and Ors. Versus Vishal Capoor and Ors. decided on 30.09.2005 in Civil Appeal No. 5919 of 2005 where the Apex Court relying upon the Award of the Industrial Tribunal has held that the dispute which was pending before the Tribunal in Reference No NTB/1/90 did not relate to the dispute between the first appellant and its workman and it related to the dispute between Air India and its Workman.

. In Anil Joshi (Supra) it was the workman who was contending that the Petitioners herein ought not to have made an application. The Petitioner was appearing in person. It was in these circumstances that this court prima facie considering the terms of Reference was pleased to take a view that there was a Reference pending and consequently the

application by the Petitioners before the Industrial Tribunal was maintainable. Subsequent thereto the Industrial Tribunal on the merits of the matter has taken a view that there is no dispute pending before it between the Petitioner and its workmen. This view is now accepted by the Apex Court in the case of Air India Ltd. & Ors Vs. Vishal Capoor and Ors.(supra).

. Considering the above, it is not necessary to go into the other aspects of the matter and consequently, the impugned award dated 24.10.2002 will have to be set aside and is consequently set aside. It will be open to the respondent workman if advised to take such steps in law including by way of Reference to agitate the dispute which he has with Petitioners.

. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO,J.)